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## **Probity Principles - A Backbone Of Good Governance and Culture**

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# Probity Principles - A Backbone Of Good Governance and Culture

- Definition
- Existing Frameworks and Guidelines
- Procurement and Probity Principles
- Probity Advisor versus Auditor
- Tender Process Risks to Manage
- Role of Internal Audit
- Questions



# Definition of Probity

- The quality of having strong moral principles, honesty and decency
- Honesty, honour, integrity, probity mean uprightness of character or action. Honesty implies a refusal to lie, steal, or deceive in any way



# Past Issues

- Director of a Public Company – extensions on his home
- Financial planners – advice to potential investors
- Tender processes – transport conflicts not disclosed, part of the evaluation team
- CEO – taken on overseas holiday with supplier 6 months prior to purchase
- Education – \$66m Ultranet project – Senior employees with shares in IT company
- Community Grants – integrity of recipients/agencies?



# Governance

## Public Sector

- Government departments are accountable for their purchasing decisions but must also:
  - Comply with Department Treasury and Finance's reporting requirements
  - Establish a governance framework for procurement that is well structured, documented and understood
  - Established procurement related policies and procedures
  - Roles, responsibilities and accountabilities are clearly articulated and understood
  - Ensure that all tenders are evaluated against consistent criteria
  - Accountability for probity





# National and State Framework on Probity

## Victoria

- In February 2013, the VGPB introduced a *Procurement Policy Framework*.
- The framework introduces five policies covering the end-to-end procurement activity from identifying needs, planning, and market research through to contract management.
  - Governance policy
  - Complexity and capability assessment policy
  - Market analysis and review policy
  - Market approach policy
  - Contract management and contract disclosure policy

## NSW

- The *NSW Government Procurement Policy Framework* sets out the policy and operating framework for the NSW public sector procurement system, and provides a single source of guidance on the rules for procurement.
- The principles based Framework was developed by the NSW Procurement Board and sets out mandatory requirements that must be followed by all agencies.

## ACT

- All procurement activities undertaken on behalf of the ACT Government are governed by the *Government Procurement Act 2001*, as amended from time to time, and the *Government Procurement Regulation 2007*.
- The Capital Framework ("TCF") is a new process for the upfront assessment of capital works funding proposals in the ACT.

## Commonwealth

- From 1 July 2014 Commonwealth entities are required to comply with the **2014 Commonwealth Procurement Rules (CPRs)**.

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# Government Procurement process



# Victorian State Government - Complexity and capability assessment policy

## Procurement complexity quadrant





# Corporate Governance

## Private Sector

- Directors and company officers play an essential role in good corporate governance.
- Your obligations as a director:
  - oversee the company's activities
  - obligations under the Corporations Act 2001 and other laws
  - act in good faith
  - act in the best interests of the company
  - avoid conflicts between the interests of the company and your own interests
  - act honestly
  - exercise care and diligence
  - prevent the company trading while it is unable to pay its debts.
- In addition, keep records (including financial records), pass solvency resolutions, lodge annual statements with ASIC.



# Corporate Governance (Cont....)

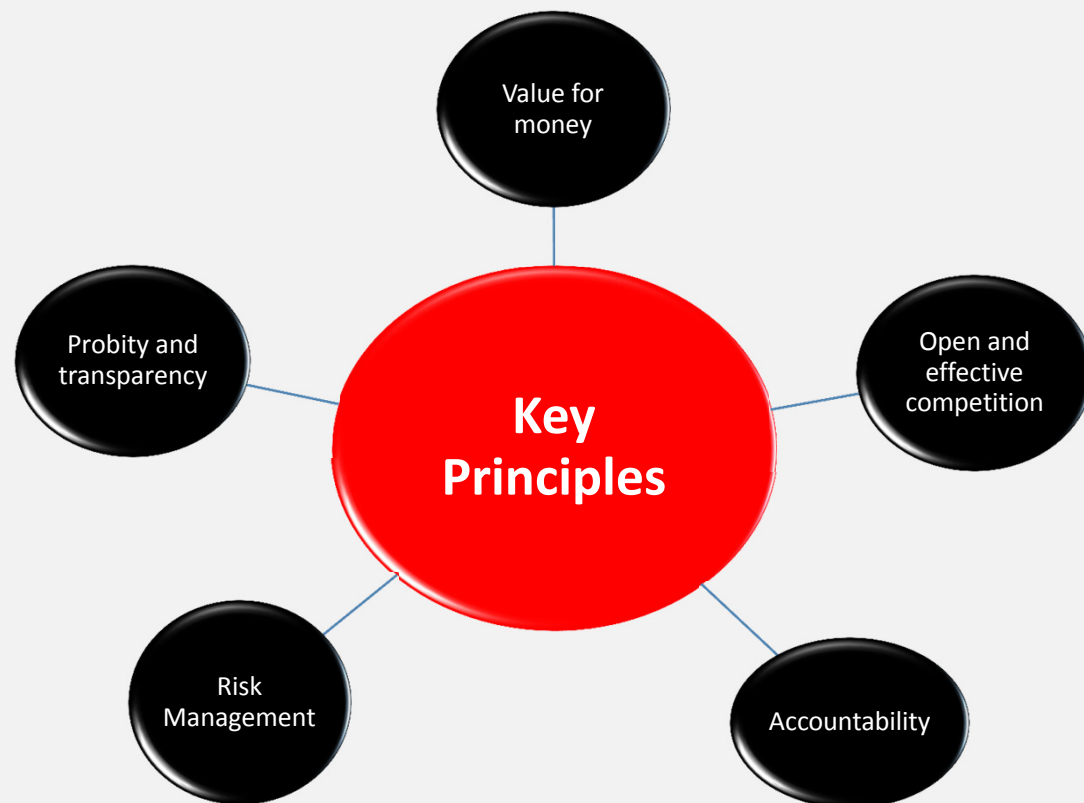
## Private Sector

- There are many sources of regulatory and best practice guidance on corporate governance, including:
  - the ASX (including the ASX Corporate Governance Council)
  - the Australian Institute of Company Directors
  - the Governance Institute of Australia
  - the Financial Services Council
  - the Australian Council of Superannuation Investors



# Procurement Principles

- Value for money
- Open and effective competition
- Accountability
- Risk Management
- Probity and transparency



# Probity Principles

- Probity signifies integrity, fairness and honesty.
- The principles used to promote probity throughout all stages of the process are:
  - fairness and impartiality
  - use of a competitive process
  - consistency and transparency of process
  - security and confidentiality
  - identification and resolution of conflicts of interest
  - compliance with legislative obligations and government policies (as they apply to tendering)



# Promoting a probity - oriented culture

- Documented policies and procedures does not guarantee employees will understand or embrace them.
  - Active promotion of probity and ethics principles
  - Clearly worked guidance documents and reference material
  - Appropriate separation of functions and a hierarchy of approval
  - Education through presentations, seminars and workshops





# Potential Risks to Avoid

1. Not allowing enough time to evaluate
2. Not considering how respondents will interpret and reply to an EOI/RFT document.
3. Setting mandatory criteria which are not really mandatory.
4. Not briefing evaluation panel members fully and adequately prior to commencing evaluation.
5. Inadvertently changing the basis of selection or introducing new criteria.
6. Reading into tender responses attributes that are not evident.
7. Not considering the 'reasonable persons' view of circumstances and relationships and potential conflicts of interest.
8. Not taking the opportunity to fully debrief unsuccessful bidders.



# Probity Auditor / Advisor

When should a probity advisor and/or probity auditor be engaged?

## Probity Advisor

- Acts as part of a procurement team and works with project managers.
- Independent assessment and/or advice throughout the duration of the project.
- Oversight of the evaluation process (including review of the final evaluation report).
- Primarily provide probity advice and solutions throughout the project.

## Probity Auditor

- Focuses on whether the procurement process has complied with the set criteria, standards or principles.
- Conducted during and after completion of the procurement project.
- A probity auditor works independently of the procurement team and is not subject to direction by the project manager.

# Probity Auditor / Advisor (Cont...)

## Determining whether to engage a probity adviser / auditor

- \$ Value and Complexity of Procurement
- Where the integrity of the process (or part of it) may be called into question
- Where the project is politically sensitive and / or potentially controversial
- To avoid a perception of bias / favouritism
- Where the process is extremely complex
- Where there are substantial costs involved in preparing submissions or there is substantial Government funding involved
- Will be open to public scrutiny



# Probity Checks

## What are the probity tasks and steps?

- Ascertain if a probity auditor or advisor is required
- Conflict of interest declaration
- Confidentiality agreements
- Procurement approach (e.g. Select tender, public tender, single supplier)
- Determine if probity plan is required
- Evaluation Plan and Evaluation Report
- Clearly established evaluation criteria
- Communication with bidders – consistent information to all bidders
- Record keeping – Secure and confidential



# Management of probity issues

- Issues should be identified and reported to the Project Manager and Probity Adviser as soon as practicable.
- Maintain a register of probity matters and issues raised.
- Establishment of a Probity Plan and Probity Guideline for high value and complex procurements.
- Determine whether it is appropriate to seek legal advice.





# State Government probity practitioners panel

## Victoria

- The Department of Treasury and Finance (DTF) is the lead Department for the establishment of a State Purchase Contract (SPC) Panel for Probity Practitioner Services.
- In total 12 Service Providers have been appointed to the Panel.

## NSW

- The NSW Department of Finance, Services and Innovation has established a number of prequalification schemes which assist agencies to find suppliers who are prequalified to work with government.
- The schemes include:
  - Financial Assessment Services
  - Performance and Management Services
  - Contingent Workforce
  - Audit and Risk Committee Independent Chairs and Members
  - ICT Services
- Other agencies / departments have also undertaken a further panel formation exercise using the Scheme - ie Transport for NSW and University of Technology Sydney.

## ACT

- The ACT Government uses pre-qualified private sector suppliers for various services including the construction of new public facilities, infrastructure and upgrades.

# Role of Internal Audit

## People and Culture

- Tone set by the Board
- Recruiting Policies – criminal history checks
- Training programs – Conflicts, Gifts and Benefits, Procurement processes
- Job rotations
- Advise on using Probity Advisors and Auditors



# Role of Internal Audit (Cont....)

## Policy Design and Consistently Applied

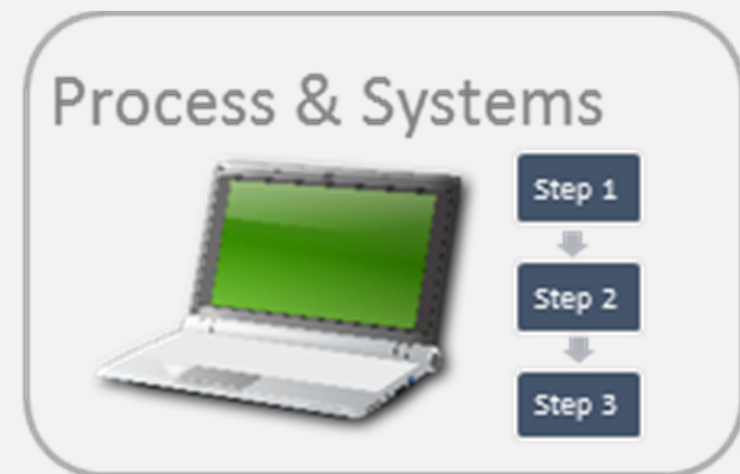
- Strategic Procurement
- Risk Management
- Conflicts of Interest
- Fraud Management
- Gifts and Benefits
- Employee Training and Development
- Information security and privacy



# Role of Internal Audit (Cont....)

## Audit Tools

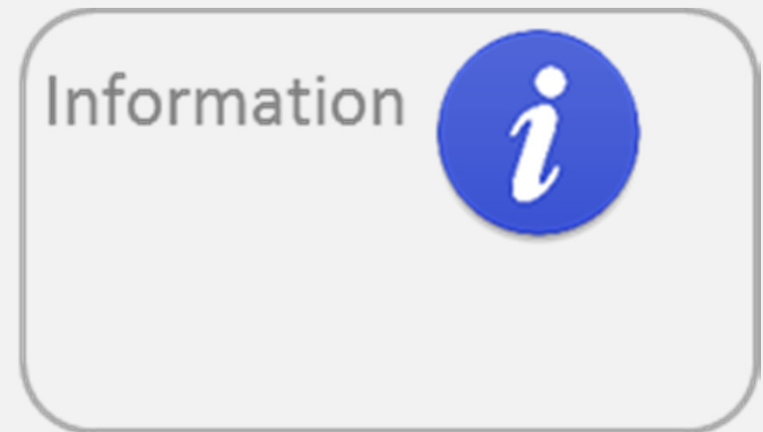
- Employee Surveys
- Data analytics
  - spend by supplier
  - by approver/manager
- Company Searches for undisclosed shareholdings
- IT Audit - security testing
- USB Encryption and Passwords



# Role of Internal Audit (Cont....)

## Quality of Information

- Procurement Exemption Reporting
- Gifts and Benefits reporting
- Number of disclosed Conflicts of Interest
- Number of information security breaches







# QUESTIONS?

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